

0-676

June 8, 1939

Honorable C. Burtt Potter
County Attorney
San Patricio County
Winton, Texas

Dear Sir:

Opinion No. 0-676 ✓

Re: Upon the consolidation on April 15, 1939, of a common school district with a contiguous independent school district, can the newly created consolidation independent school district disregard the basis of valuation used by the former common school district and assess property of the entire district on the basis of valuation used by the independent school district, or such other valuation as required by law.

Under date of April 22, 1939, you submit, for the opinion of this department the following question:

"The Taft Independent School District and the West Portland Common School District Consolidated on April 15, 1939. The Taft Independent School District assesses property on a valuation of 60%. The common school district uses the county rate or percentage on valuations of 40%.

"The percentage of valuation in each district was adequate prior to the consolidation.

"Can the newly created or consolidated district increase the valuations of that part of the district which was annexed on April 15th, and after Jan-

Honorable C. Burt Potter, June 8, 1939, Page 2

uary 1, 1939, the taxable date for assessment, in proportion to the valuations of the Taft Independent School District of same date?"

Although the fact is not specifically stated in your letter, it is assumed that the consolidation in question was effected after an election called for the purpose in each of the districts involved, in the mode and manner provided by Article 2806, Revised Civil Statutes. This being so the Taft Independent School District and the West Portland Common School District lost their separate identity and together constituted a single new district. 37 Tex. Jur., p. 900; Dyer vs. Consolidated School District No. 5, Callahan, 22 S.W. (2d) 712; County Board of School Trustees of Limestone County vs. Wilson, 5 S. W. (2d) 805.

Article 2806, Revised Civil Statutes, under which the consolidation was consummated, provides that "and the district so created shall be known by the name of the independent school district included therein, and the management of the new district shall be under the existing board of trustees of the independent school district, and all the rights and privileges granted to independent districts by the laws of this State shall be given to the consolidated independent district created under the provisions of this law."

Consequently the statutes controlling the levy, assessment and collection of maintenance taxes for independent school districts must be consulted rather than those statutes governing the levy, assessment and collection of such taxes from common school districts, and Section 5, Article 2784, Revised Civil Statutes, providing that "All property assessed for school purposes in a common school district shall be assessed at the rate of value of property as said property is assessed for State and county purposes", is, of course, no longer applicable to the facts of this case, so as to require the assessment by the new consolidated district at the rate of value of 40% used for State and county purposes.

An independent school district, such as the one involved in the instant inquiry, may, through its Board of Trustees, cause school taxes of such districts to be assessed and collected by the County Assessor and Collector, or such district may elect to name its own Assessor and Board of Equalization. In connection with the latter method, Article 2791, Revised Civil Statutes provides as

Honorable C. Burr T Potter, June 8, 1939, Page 3

follows:

" . . . It shall be within the discretion of the board of trustees of any independent school district to name an assessor of taxes who shall assess the taxable property within the limits of the independent school district within the time and in the manner provided by existing laws, in so far as they are applicable, and when said assessment has been equalized by a board of equalization appointed by the board of trustees for that purpose, shall prepare the tax rolls of said district and shall duly sign and certify same to the county tax collector as provided for in the succeeding article."

It is not made to definitely appear from your letter which method is employed by the consolidated Taft Independent School District, but since the amendment of Article 2792, Revised Civil Statutes, regarding the basis of valuation for assessment purposes when taxes are assessed and collected by the county assessor and collector, the method employed by an independent school district is not controlling. As originally enacted Article 2792, Revised Civil Statutes, with regard to assessment rates, provides as follows:

"The property of such districts having their taxes assessed and collected by the county assessor and collector, shall not be assessed at a greater value than that assessed for county and State purposes."

In 1937 said Article 2792, Revised Civil Statutes was amended so that the provision regarding the assessment rates for independent school district taxes provides as follows:

"The property of such districts having their taxes assessed and collected by the county assessor and collector, may be assessed at a greater value than that assessed for county and State purposes, and in such cases the county tax assessor and collector shall assess the taxes for said district on separate assessment blanks furnished by said district, and shall pre-

pare the rolls for said districts in accordance with the assessment values which have been equalized by a board of equalization appointed by the Board of Trustees for that purpose."

So we see that for aught that appears in the controlling statutes the Taft Consolidated Independent School district, in assessing the property formerly embraced in the West Portland Common School District, and acquired by the consolidated election of April 15, 1939, is not limited to the county rate of valuation of 40% used by the West Portland Common School District, but has express statutory authorization for the assessment of the property of the district at a greater value than that assessed for county and State purposes.

In reaching this conclusion, no difficulty is presented by the fact that the consolidation election in question transpired subsequent to January 1, 1939. January 1 of each year is the date fixed by statute as determinative of the ownership of property and consequent liability for taxes for the ensuing year, and does not control the time of levy, assessment or collection of taxes. Property owned on January 1 of any given year, in territory which is included in an independent school district thereafter created, or which is thereafter annexed to an existing independent school district, is chargeable with taxes subsequently levied by the district for that year. *Cadena vs. State*, 185 S.W. 367; *Yorktown Independent School District vs. Afferbach*, 12 S.W. (2d) 130; *Blewitt vs. Megargel County Line Independent School District*, 285 S.W. 271.

In *Cadena vs. State*, supra, it is said:

"All property owned on the 1st day of January is subject to any tax authorized by law, whether such taxes have been authorized theretofore or may be authorized during the year, and can be levied by the body given the power to levy at any time during the year. Laws naming the time for the levy of taxes are merely directory, and legal taxes can be levied whenever the necessity arises. Laws authorizing taxes are not retrospective so far as the year in which they are authorized is concerned."

Honorable C. Burt Potter, June 8, 1939, Page 5

The case of David vs. Timon, 185 Tex. 88, although not involving a school question, upholds this principle of law with the following language:

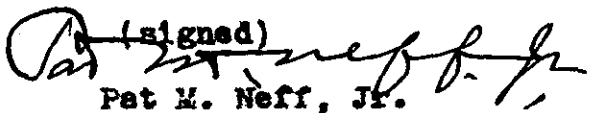
"Assessments for taxation are made on all property held by the owner on January 1st of each year, and that assessment forms the basis and is essential to the levy and collection of taxes. All property held and owned on the 1st day of January of each year is bound for and subject to the taxes levied during that year, whether such levy be made in the beginning, the middle, or the last of the year."

An assessment of taxes, in natural sequence, follows the levy of such taxes, and the assessment is not completed until the valuation or equalization of the property in the prescribed manner by the constituted authority. If, therefore, under the authorities next above discussed, the Taft Consolidated Independent School District may lawfully at any time during the year 1939 subsequent to the consolidation election which created such district, levy school taxes against properties which were not in such taxing district on January 1, 1939, then it must follow that such district may assess such properties in the manner, and at the rate of valuation prescribed by Article 2791 and Article 2792, as amended, Revised Civil Statutes, hereinabove discussed, in answering your question affirmatively.

Trusting the foregoing will satisfactorily answer your question, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By  (signed)
Pat M. Neff, Jr.
Assistant

FMN:FG

APPROVED:


ATTORNEY GENERAL OF TEXAS